

***United States Court of Appeals  
for the Second Circuit***



**JOINT APPENDIX**





# 76-4236

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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No. 76-4236

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F. K. KERPEN & CO., INC., and  
FRED K. KERPEN,

Petitioners,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

---

On Petition for Review of an Order of the  
Securities and Exchange Commission

---

JOINT APPENDIX

---

FRED K. KERPEN, Pro Se  
F. K. KERPEN & CO., INC.  
27 Washington Square, North  
New York, New York 10011

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Securities and Exchange Commission  
Washington, D.C. 20549





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PAGINATION AS IN ORIGINAL COPY



NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
DISTRICT BUSINESS CONDUCT COMMITTEE  
FOR DISTRICT NO. 12

District Business Conduct Committee  
For District No. 12

Complainant

vs.

F. K. Kerpen & Co., Inc., Member  
18 East 41st Street  
New York, New York 10017

COMPLAINT  
NO. NY-1730

and

Fred K. Kerpen, Registered Principal

and

Fabian Nebenzahl, Registered Representative

Respondents

Upon information and belief, Complainant alleges as follows:

1. During all periods mentioned herein, respondent, F. K. Kerpen & Co., Inc., a registered broker-dealer with its offices located in New York City, was a member of this Association, which membership remains currently effective.
2. During all periods mentioned herein, respondent, Fred K. Kerpen, was President and active operating head of respondent member and was registered with this Association as a registered principal thereof, which registration remains currently effective.
3. During all periods mentioned herein, respondent, Fabian Nebenzahl, was employed as a sales representative of respondent member, and was registered with this Association as a representative thereof, which registration remains currently effective.

FIRST CAUSE OF COMPLAINT

4. During the period from about August 15, 1968 to about April 3, 1970, respondent, Fabian Nebenzahl, acting in his capacity as set forth in paragraph 3, above, engaged in a course of conduct which operated to deceive and defraud various public customers in that, respondent, Nebenzahl, among other things:

0000011



- a. caused to be liquidated, on four separate occasions, shares of the Dreyfus Fund in the customer accounts of Andrew and Tamara Borowiec in a total amount of \$9,189.50 (all as more fully set forth on Schedule "A", attached) and, subsequently, came into possession of the four checks representing payment to the customers, appended the names of the customers to said checks, negotiated same and appropriated the funds to his own use and purposes, all without the knowledge and consent of said customers;
- b. received, on or about December 2, 1969, January 6, 1970 and February 5, 1970, three separate checks in the amount of \$500 each from Sandy Joel Siff payable to respondent, Nebenzahl, for the designated purpose of investment in the Dreyfus Leverage Fund, which monies were not thereafter transmitted promptly by respondent, Nebenzahl, to his employer or to Dreyfus, but instead were converted by Nebenzahl to his own use and purposes without the consent of the aforementioned customer;
- c. received, on or about, March 8, 1970 and April 3, 1970, two separate checks in the amount of \$500 each from Sandy Joel Siff payable to respondent, Nebenzahl, for the designated purpose of investment in the Dreyfus Leverage Fund, which monies were not thereafter transmitted by respondent, Nebenzahl, to his employer or to Dreyfus, but instead were converted by Nebenzahl to his own use and purposes without the consent of the aforementioned customer; and
- d. received, on or February 6, 1970, two separate checks in amount of \$7500 each from Morris and Olga Rutner, payable to the Bank of New York, for the designated purpose of investment in the Dreyfus Fund, which monies were not thereafter transmitted promptly or in total by respondent, Nebenzahl, to his employer or to Dreyfus, but instead were converted by Nebenzahl to his own use and purposes without the consent of the aforementioned customers.

5. the acts, practices and conduct aforesaid constitute separate and distinct violations of Sections 1, 18 and 19(a) of Article III of the Rules of Fair Practice of this Association by respondent, Fabian Nebenzahl.

0000012



SECOND CAUSE OF COMPLAINT

6. Respondent, F. K. Kerpen & Co., Inc., acting through respondent, Fred K. Kerpen, in his capacity as described in paragraph 2, above, failed to properly supervise respondent, Fabian Nebenzahl, in connection with the activities described in paragraph 4, above.

7. The aforementioned failure to supervise constitutes separate and distinct violations of Sections 1 and 27 of Article III of the Rules of Fair Practice of this Association by respondents, F. K. Kerpen & Co., Inc. and Fred K. Kerpen.

THIRD CAUSE OF COMPLAINT

8. Under date of October 22, 1971, the Association made a formal written request of respondent, Fabian Nebenzahl, in his capacity as set forth in paragraph 3, above, requesting that he contact a representative of the District No. 12 staff, in connection with an investigation of his activities while employed by F. K. Kerpen & Co., Inc.

9. To date, respondent, Fabian Nebenzahl, has failed to comply with the written request referred to in paragraph 8, above, thereby denying the Association its inherent right as asserted under the provisions of Section 5 of Article IV of the Rules of Fair Practice of this Association.

10. The acts, practices and conduct aforesaid constitute a violation of Section 1 of Article III of the Rules of Fair Practice of this Association by respondent, Fabian Nebenzahl.

DISTRICT BUSINESS CONDUCT COMMITTEE  
FOR DISTRICT NO. 12

BY: 

For The Committee

DATED: January 9, 1973

0000013



Schedule "A"

Complaint No. NY-1730

LIQUIDATIONS OF THE DREYFUS FUND  
IN THE CUSTOMER ACCOUNTS OF  
ANDREW AND TAMARA BOROWIEC

<u>ACCOUNT NUMBER</u>	<u>DATE OF LIQUIDATION</u>	<u>NO. OF SHARES LIQUIDATED</u>	<u>AMOUNT OF LIQUIDATION</u>
617437	August 15, 1968	168.574	\$2,500.00
617436	August 16, 1968	167.895	2,500.00
027916	August 27, 1968	200.000	2,986.00
617437	October 21, 1968	<u>75.117</u>	<u>1,203.50</u>
	<u>T O T A L</u>	<u>611.586</u>	<u>\$9,189.50</u>

0000014



Combined response.

District # 12  
Complaint # NY-1730Respondents: Fred K. Kerpen, Reg. Princ.  
F.K.Kerpen & Co., Inc. B/D member

It is true to the best of the undersigned's knowledge and belief:

First cause of complaint

a. b. and c.

In the summer of 1971 a telephone call from Mr. Siff set in motion a number of checks on our part - with the custodian bank, the Dreyfus Corp., Mr. Nebensahl and call-backs to Mr. Siff. As a result we advised Mr. Siff to take his complaint to the Association and to contact the District Attorney. There followed a letter of August 30, 1971 by Mr. Cavallo, our response of 9-1-71, a visit to our office by Mr. Harold C. Brooks, and 2 letters of mine, addressed to Mr. Brooks, dated September 17, and 29.

All this is on record.

Mr. Siff's call in itself did not come as a surprise. As I told Mr. Brooks and repeated in both my letters, clients had several times telephoned, complaining about missing confirmations, absence of contact by Mr. Nebensahl for a lengthy period of time, investment results, and asking whether their accounts were in order. Immediate checks with Mr. N. a l - w a y s resulted in renewed contact by these clients who took pains to explain that their accounts were in order, that, whatever they did not understand, was straightened out, and that everything was just fine.

There was one exception: Mrs. Shaynhouse who had contacted me in behalf of her and her husband's accounts. They had given Mr. N. money (in the form of cash or checks made out to him personally) and had not received the confirmations they thought they were entitled to. To the best of my recollection that was sometime in early 1971 and N. admitted to me that he had not sent in "all the money" as the Shaynhouse accts. He insisted that the matter had been straightened out with Mrs. S. which she confirmed to me. N. made partial payments in restitution, but, according to Mrs. S. soon fell behind an agreed schedule. Mrs. S. discussed with me the feasibility of a suit against N., but decided that it was best to let him earn some money to be able to make good. Mrs. S. and I kept in touch by telephone. I in turn was on Mr. N.'s back. Also by phone. Because of a heart attack he avoided coming into Manhattan.

Finally an attachment of Mr. N.'s earnings with this firm by the Shaynhouse' lawyer arrived in the mail. It was followed, a couple of days later, by a request of the Attorney to disregard the subpoena. Mr. N. had contacted the lawyer in person and worked out a satisfactory settlement. Mrs. S. confirmed that.

0000017



The attorney's letter is dated May 18, 1971. A hand-written states: You may release to N. any money you may hold on his behalf. N. actually made monthly payments for a while. As far as I am concerned he was in the clear. The Mr. Huff's phone call came.

Mr. Nebenzahl when I was still associated with First Investors Corp. some time in the mid 50s. He was a member of the staff of Sol Huber, well-known estate planner and head of his highly-regarded agency, representing Connecticut Mutual, an old-line life insurance company. We had lunch and he took me to his office which exuded respectability. No further contact ensued, business or otherwise, until sometime in 1967 when I took over the account of Baron Helbig, deceased. N. had been with him for a number of years and joined this firm, after a short stay with another B/D, upon intercession of Ms. Evelyn Brooks. Ms. Brooks, who had been associated with Mr. Helbig for 27 years up to the time of his death, had - and continued to have - the highest regard for Mr. N.

When did he begin to slide? Why? I don't know.

A salesman extraordinary he got people to give him cash or checks made out to him. About a month ago a client who had bought IFC Debentures from this firm through Mr. N. told me that he now advises against their purchase - and she would take his advice no matter. Ditto another client, one who had once complained. I asked him specifically in a telephone conversation last week and, praising Mr. N., he reassured me that everything was always in the best of order.

How do you supervise a guy like that? Cut him off? Ms. Brooks told me that he had recently married a woman with three children. It is easy for me or any B/D or the Association not to have to do anything with him, but as long as there was hope that he would stay on the straight path?

Should I have canned him after the Shaynouse lawyer told me that the man was in his office and promised to make good? And did for a while?

First cause of complaint:

I have heard of anyone by name of Borowiec and never saw the name other than that it was one of several 100, perhaps close to 1,000 accounts turned over to us by B. Helbig Co. One day I got a call from Dreyfus which was followed by the copy of Mr. Borowiec's letter to Mr. Stein. If, after being told by Dreyfus and back-sure assurance by Mr. N., I had thought that that was anything but a crank letter, I most certainly wouldn't have left it in my files for anyone to find.

X THA 100 24 70 100 4115 CK

0000018



1  
2 MR. KERPEN: No.

3 (Copy of October 22, 1971 letter  
4 fr. Darold Brooks to Fabian  
5 Nebenzahl and attached Post  
6 Office receipt was received and  
marked as Association's Exhibit  
10 in evidence, as of this date.)

7 MS. SALVIA: Respondent F. K. Kerpen &  
8 Company, acting through respondent, Fred K. Kerpen,  
9 registered principal, is charged in the second  
10 cause of complaint with failure to supervise the  
11 above mentioned activities of respondent, Fabian  
12 Nebenzahl.

13 A copy of Mr. Borowiec's letter to Mr. Stein  
14 at the Dreyfus Fund, found in the member's files,  
15 indicates his awareness of this matter since January  
16 1969.

17 A copy of a stipulation of settlement and an  
18 affidavit of facts appended to a default judgment  
19 related to "an action for monies had and received  
20 by defendant Nebenzahl, and for fraudulent con-  
21 version of monies," which were retained in the  
22 member's file under date February 10, 1970, indicate  
23 Mr. Kerpen's knowledge of problems in other customer  
24 accounts of Fabian Nebenzahl.

25 Mr. Chairman, may I submit as Association's



Exhibit No. 11, a copy of the above mentioned judgment, affidavit of facts, and stipulation of settlement. The documents are entitled: "Elaine Shainhouse, plaintiff, against Fabian Nebenzahl, defendant."

THE CHAIRMAN: Any objection?

MR. KERPEN: The law withdrew--what's meant when you say "a settlement?" There was a settlement. The law withdrew the complaint and there was an attachment of funds.

I have evidence here. I gave it to Mr. Brooks when he examined the thing.

THE CHAIRMAN: You could present that as evidence for your side.

MS. SALVIA: I am just trying to show that you had to be aware of these matters.

MR. KERPEN: The subpoena came one day and twenty-three days later came the release.

I have no objection to this evidence being introduced.

(Copy of above mentioned judgment, affidavit of facts and stipulation of settlement were received and marked as Association's Exhibit 11 in evidence, as of this date.)



8 THE CHAIRMAN: If you'd like to put that and  
9 anything else into evidence.

12                   The letter, the subpoena, is dated, made out,  
13                   on the 5th of February. I got it later than that.  
14                   It's dated the 7th of May.

17                    "The subpoena served upon you with restrain-  
18                    ing notice in the above entitled matter, the matter  
19                    entitled Shainhouse versus Nebenzahl. As Mr.  
20                    Nebenzahl has voluntarily come in to see me with  
21                    regard to liquidating his indebtedness to my client  
22                    and entered into a payment plan for that purpose,  
23                    therefore you may consider this plan consented to,  
                    and withdrawn.

0000048



"P. S.: You may release to him any money you now hold on his behalf. Scheinberg."

There was a check for fifty cents attached.

Would you like to introduce that into evidence?

THE CHAIRMAN: Do you have any objection?

MR. KERPEN: That is my original.

(Xerox copy of letter from William Scheinberg was received and marked as Respondents' Exhibit 1 in evidence, this date.)

THE CHAIRMAN: Mr. Kerpen, would you like to go forward?

MR. KERPEN: I'd merely like to ask the three gentlemen if you read my response in writing; it's part of the evidence, because I summarized my defense in a two-page letter.

I don't have much to add to that.

THE CHAIRMAN: You are referring to a two-page letter that is not on a letterhead; it starts with "Response" and there is no signature, and the last sentence on the second page, "I certainly wouldn't have it in my files for anybody to find."

This is not really a letter; that is part of an answer to the complaint.

0000049



1  
2 last check with that letter and I had no dealings  
3 with him.

4 THE CHAIRMAN: Up until that time he was a  
5 registered representative of yours?

6 MR. GRAHAM: What is the date of that:  
7 September 17, 1971?

8 Prior to August 30, 1971, you say in your  
9 answer that you did advise Mr. Siff to inform the  
10 District Attorney?

11 MR. KERPEN: Yes. J

12 MR. GRAHAM: So, at that time, at least by  
13 that time, you knew that Mr. Nebenzahl was a pro-  
14 blem?

15 MR. KERPEN: A fraud; stolen money; right.

16 MR. GRAHAM: When did you first realize  
17 that he was a bad apple?

18 MR. KERPEN: On Mr. Siff's calling me.

19 MR. GRAHAM: You say in the summer of 1971?  
20 Do you remember when that was?

21 MR. KERPEN: August, July. Sometime along  
22 that, he called me on the phone and said, "I have  
23 given Fabian my check and it hasn't been invested."  
24 Give me some data, the account number, let me look  
25 up the account number and Mr. Siff, who I also had



never met in person, was very pleasant in this case.  
He just hasn't made an investment and this is not  
in the course of two or three conversations, and  
when I said, "Leave it to me"--I gave him so and so  
it wasn't invested--I was the one that suggested  
going to the NASD to get a stop to this.

THE CHAIRMAN: You say that to the best of  
my recollection that sometime in early 1971--this  
is about the Shainhouse thing--early in 1971 and  
admitted to me that he had not sent it--all the  
money.

Do you know when that was?

MR. KERPEN: No.

THE CHAIRMAN: Early in 1971?

MR. KERPEN: It began in drips and drabs;  
there was a phone call and there was not that re-  
assuring call back.

THE CHAIRMAN: When did first get wind of  
the Borowiec problem?

MR. KERPEN: Have you got the letter there  
in front of you?

THE CHAIRMAN: You said in the last paragraph,  
"I never heard of anything at that time about  
Borowiec." It doesn't give a date; the last dates

0000062



2 of the account are back in 1968.

3 I was a little confused by the presentation  
4 of the evidence, and I am trying to get a time-  
5 table as to when you were aware of that.

6 MR. KERPEN: I think I can be helpful on  
7 that. Let me find the Borowiec letter.

8 THE CHAIRMAN: The Borowiec letter is a  
9 matter of itself. You might give us some kind of  
10 a timetable and explain when we sent the letters  
11 to Nebenzahl on the different matters--we are trying  
12 to question Mr. Kerpen; we'd like to get out when  
13 he was first aware of the problem, of the various  
14 problems, when they came up, so we can question him  
15 while he is here.

16 MR. KERPEN: The Borowiec letter was typed  
17 on the 16th of January, 1969.

18 THE CHAIRMAN: If you don't mind, let's see  
19 if Miss Salvia can prepare us a little timetable;  
20 then we can ask you.

21 MS. SALVIA: I have January, 1969, and  
22 January 16th, was Borowiec, the letter to Stein.

23 Then, I have a stamp from February 10, 1970  
24 indicating that the Shainhouse incident had come to  
25 Mr. Kerpen's knowledge at that time.

0000063



September 17, 1971 Mr. Kerpen mentioned to  
Mr. Brooks--

MR. KERPEN: Let me see--you are referring  
to the suit by Shainhouse of Nebenzahl?

MS. SALVIA: Yes, sir.

MR. KERPEN: That wasn't found in my file.  
There is a stamp indicating that.

THE CHAIRMAN: Mr. Kerpen, let Ms. Salvia  
just put down a little timetable, then we can ques-  
tion you in a lucid way.

MS. SALVIA: We have the September 17, 1971  
letter to Darold Brooks, the Examiner, and in that  
he discloses not only the Siff problem, the problem  
of the Siff accounts, but also a problem involving  
Mr. Kudrle and Mabel and Margaret Fischer that Mr.  
Kerpen had knowledge of.

MR. LYNCH: Off the record.

(Discussion off the record.)

MR. GRAHAM: In your response, you state--  
speaking of following telephone calls from Mr.  
Siff--you say, as a result we advised Mr. Siff to  
take his complaint to the Association and to con-  
tact the District Attorney.

Now, this Exhibit 12, your letter to Mr.

0000064



1  
2 Brooks under date of September 17, 1971: You point  
3 out, and I quote: "Mr. Siff, suggested turning the  
4 matter over to the District Attorney. When this  
5 threat elicited no response from Nebenzahl, he con-  
6 sulted me again. I had not heard from him either  
7 and suggested to Mr. Siff to threaten with dis-  
8 closure to the NASD."

9 So, it would seem that you are a little hazy  
10 here in your recollection; you actually did not  
11 suggest to Mr. Siff that he go to the District  
12 Attorney, because Mr. Siff apparently suggested  
13 that to you.

14 MR. KERPEN: To me, and I countered it by  
15 telling him to go to the NASD.

16 MR. GRAHAM: In your letter on September 17,  
17 1971, to Mr. Nebenzahl, you first became acquainted  
18 with the problem, as your response indicated, in the  
19 summer of 1971; however, this letter, dated September  
20 17, 1971 to Mr. Nebenzahl: you proceed to point out,  
21 "Your difficulties, which as you are well aware of,  
22 were known to me for some time."

23 Now, how long is that "for some time?"  
24 This is what we are really attempting to determine.

25 MR. KERPEN: Mr. Graham, picture yourself



1  
2 in the situation before it blew up, which is when  
3 Siff called me.

4 The Shainhouse matter, I would discuss it  
5 with Miss Brooks, who had a little room in my office  
6 --how can it be, the man is just remarried, a woman  
7 with three or four kids and maybe he requires money  
8 to cover a hole, and opened another one--but, this  
9 is a highly respected fellow, a salesman, a fellow  
10 representative.

11 Mrs. Shainhouse called me; I called her back  
12 --I don't understand it, I spoke to Fabian, he said  
13 something or other--I haven't sent it in--something  
14 about it. But, it just didn't add up to anything  
15 at that time. It was mysterious and puzzling, but  
16 what do you do with a guy like that?

17 MR. CLARK: Well, now you mention the  
18 Shainhouse matter. That, according to my notes,  
19 was back in February of 1970, a year and a half  
20 before all this.

21 What I can't get through my noodle--in 1969,  
22 you got this Borowiec thing?

23 MR. KERPEN: Yes.

24 MR. CLARK: And then, a year later,  
25 Shainhouse comes along, and then presumably inter-



1  
2       spersed in the month in there, you had complaints  
3       from the Fischers and Kudrle and the Rutners check  
4       business came along in February, 1970, according  
5       to my notes.

6               MR. KERPEN:    There was nothing wrong with  
7       that check.

8               MR. CLARK:    But, you say "very seldom"--at  
9       least I understand you to say, earlier on "very  
10      seldom"--but this sort of thing where monies were  
11      paid into R.R.s and then paid out again--

12              MR. KERPEN:    Right.

13              MR. CLARK:    Yet, there seems to be quite a--

14              MR. KERPEN:    There is a check paid out to  
15      the Bank of New York, this is a proper way of doing  
16      it.

17              MR. CLARK:    Which one now?   Shainhouse?

18              MR. KERPEN:    No, no; you were referring to  
19      the \$7,500 in the letter of February 9th.

20              MR. CLARK:    What was the problem with  
21      Shainhouse?

22              MR. KERPEN:    I never saw any money go through  
23      my firm on that.   That was directly into an account.  
24      Shainhouse has a couple of accounts; one regular  
25      one, a Keogh account.



customer--why, if this series of incidents began in December, 1969, it took until December of 1971 for the Siffs to raise the question with you? This is a year and a half in which they received no receipts on payments.

MR. KERPEN: Well, permit me, please, to take exception to the statement that the series began in 1969.

I dismissed the Borowiec letter as a crank letter, from my mind, and from my business activities. The actual rumbles, as I call it, from my letters to Brooks, started in 1970 and 1971, the year where I got the calls--this is a perfectly legitimate businesslike proper letter which is handled in a proper manner by me. I knew nothing.

If I got another \$7,500 check I don't know.

But, the rumbles began with the phone calls, and somebody would call me up and say, "What's the matter with my account", and in each case, and this is a usual situation on the street--I got a follow-up call from the same person. They called me and said, "Fabian has called me. He has explained it to me; everything is fine, absolutely."

If you want evidence, call Mr. Butner here



1 and the Fischer sisters.

2  
3 MR. GRAHAM: It is apparent that for a long  
4 time he was able to cover his tracks.

5 MR. CLARK: Sir, have you taken--hoping your  
6 business will get much better, if it does, or even  
7 if it just goes along--have you taken any steps to  
8 alter your procedures to satisfy, to assure us that  
9 this can't happen again?

10 MR. KERPEN: Alter my procedures?

11 MR. CLARK: So that this type of thing  
12 doesn't happen again?

13 MR. KERPEN: As long as there are human  
14 beings, there will be crooks. You can build the  
15 thickest walls, some of them will be broken.

16 MR. CLARK: Such things as insuring that  
17 all checks are funnelled through you, so you can  
18 keep track of them?

19 MR. KERPEN: All checks always came through  
20 me. A good salesman like Nebenzahl would go to a  
21 client and say, "How about investing some money?  
22 Give me a check to Kerpen."

23 That's the hard part: To get their check.

24 All right, but guys are still around, if this  
25 business revives, would we handle it that way?



12 The Oaks  
Roslyn Estates, New York  
11576  
August 23, 1971

Mr. John Cavallo  
National Association for Security Dealers  
77 Water Street  
New York, New York 10004

Dear Mr. Cavallo,

I would like your association to investigate the actions of Fabian Nebenzahl of the company Fabian Nebenzahl, CLU and Associates, 110-06 101st Avenue, Richmond Hill, New York, formerly of 90-04 161st Street, Jamaica, New York, 11432.

On the following dates; 12-2-69, 1-6-70, 2-5-70, I gave three (3) checks, each one \$500.00 in value (total \$1500.00) to Mr. Nebenzahl, salesman for dealer F.K. Kerpen and Company, Inc., 18 East 41st Street, New York, New York, 10017, to purchase Dreyfus Funds. On 2-11-70, I received from the Dreyfus Leverage Fund, Inc. (The Bank of New York, Agent) confirmation slips of \$750.00 for account # 634601 (Carolyn Siff, my wife) and \$750.00 for account # 634600 (Sandy Joel Siff, myself).

On 3-8-70 and 4-3-70 I gave to Mr. Nebenzahl two checks, each made out for \$500.00 (total \$1,000.00) for an additional investment in The Dreyfus Leverage Fund, Inc. Upon receiving the cancelled checks, I called up Mr. Nebenzahl inquiring about the lack of confirmation from Dreyfus Leverage Fund and the acquisition of shares. His reply was that he had given the money to the dealer, and the dealer was unable to purchase any of the fund at this time because of an investigation concerning the Dreyfus Fund. Since Mr. Nebenzahl has been a friend of the family for fifteen years, there was no reason on my part to suspect any wrongdoings. Periodically, I would call Mr. Nebenzahl to find out what was happening with my money. His reply would be the same, the dealer had the money and would not invest the money because the market was down. Knowing very little about the market except that I knew the market was down and having trust in a family friend, I was naive to believe what Mr. Nebenzahl was telling me. Lately, Mr. Nebenzahl would not return my telephone calls. Finally getting suspicious, I called Mr. F.K. Kerpen's office (8-18-71) and he said that he never received the \$1,000.00 that I gave to Mr. Nebenzahl for investment in Dreyfus Funds or did he know anything about the transaction. He said he would call Mr. Nebenzahl to straighten out my account. I called Mr. Kerpen again on 8-23-71 and he said that he spoke to Mr. Nebenzahl and that Mr. Nebenzahl was to have called me on 8-18-71, which he did not. I have since called Mr. Nebenzahl on 8-22-71 and 8-23-71 and he has not returned my telephone calls.

I am enclosing the cancelled checks (photostat) made out to Mr. Nebenzahl's Company and the confirmation slips (photostat) that I have received from the Dreyfus Leverage Fund so that it might help in your investigation and the return of my money. Thank you for your cooperation.

PS Mr. Kerpen has been helpful.

Sincerely yours,

Sandy Joel Siff

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Associations 5  
R.A.P.  
Date 11/19/74



7

MEMORANDUM

TO : File

SUBJECT : Meeting with Fabian Nebenzahl

RE : Public Complaint No.71-726

PRESENT : Fabian Nebenzahl, Registered Representative, F. K. Kerpen & Co., Inc.  
Jack Rosenfield, Senior Examiner  
Darold C. Brooks, Staff Examiner

DATE : October 5, 1971

Today, a meeting was held in the Association's offices, with Mr. Fabian Nebenzahl, Registered Representative, F. K. Kerpen & Co., Inc. The purpose of this meeting was to discuss and gain further information regarding a complaint received from Mr. Sandy Joel Siff, a customer of Mr. Nebenzahl (P.C. No.71-726, Exam No. 9.71-960-XM). Additionally, it was the intention of this examiner to discuss with Mr. Nebenzahl his dealings with several other customers in whose account investigation has disclosed possible Rule Violations.

Mr. Nebenzahl arrived at the Association's offices at approximately 10:30 A.M. and was interviewed from that time until approximately 12 noon.

Initially, Mr. Nebenzahl was questioned regarding his experience in the securities industry and the nature of his current business operation. Mr. Nebenzahl stated that he was originally employed as a clerk in a Wall Street firm as early as 1928 but left the industry until becoming a registered representative of Baron G. Helbig & Co. in the 1950's (August 1957). He remained with that firm until Mr. Helbig's death, at which time he became registered

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Associations 7  
NAP  
April 11, 1974

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with F. K. Kerpen & Co., Inc. (January 1967). His present business is that of general insurance sales, as agent for several insurance companies and mutual fund sales as a registered representative of F. K. Kerpen & Co. However, he is, at this time, suspended by his employer, from doing business in the firm's name.

He presently does business as Fabian Nebenzahl, C.L.U. and Associates at 110-06 101st St., Richmond Hills, New York. His major source of income is insurance commissions, having earned only approximately \$1,000 - \$2,000 in mutual fund commissions this part year.

Mr. Nebenzahl was then questioned regarding his relationship and business dealings with Mr. and Mrs. Sandy Joel Siff. In answer to questions presented, Mr. Nebenzahl stated he had known the Siffs for approximately ten (10) years. He had been introduced to them by Mrs. Siff's now deceased brother, who was then courting his (Nebenzahl's) daughter. His first business dealing with them was about 5 years later (4 or 5 years ago) when he sold them life insurance. Thereafter, in late 1969, Mr. Siff became interested in making an equity investment and consulted Mr. Nebenzahl. At that time he was sold the Dreyfus Leverage Fund under a Voluntary Accumulation Plan.

On December 2, 1969, January 6, 1970, and February 5, 1970, Mr. Nebenzahl was given three \$500.00 checks, totalling \$1,500.00, by Mr. Siff, to be invested in the Dreyfus Leverage Fund. These checks were payable to Mr. Nebenzahl and deposited by him to his personal business checking account (Chemical Bank Account No, 120-203243). The funds represented by these checks, on deposit in Mr. Nebenzahl's account, were not segregated from the personal funds of Mr.



Nebenzahl nor were any formal records maintained by him to indicated a balance due Mr. Siff. Moreover, Mr. Nebenzahl stated that at any given time his account balance was probably not sufficient to return or invest the full amount of Mr. Siff's money.

Subsequently, on February 9, 1970, Mr. Nebenzahl forwarded to F. K. Kerpen & Co. a check for \$7,500 which represented investments of \$6,000 for the accounts of Morris and Olga Rutner (Mrs. Siff's mother and father) and \$1,500 for the accounts of Mr. & Mrs. Siff. The forwarding of this check represented the investment of all funds given to him by the Siffs. When questioned as to the delay in forwarding Mr. Siff's checks of December 2, 1969 and January 6, 1971, Mr. Nebenzahl stated that Mr. Siff had given the money to him to invest when he considered the time to be right. This was confirmed with the customer; however, no written discretionary authority was given. When questioned further, Mr. Nebenzahl stated that although the customer had a Voluntary Accumulation Plan and was to Dollar/Cost Average his investment over a period of many years, he was trying to better the average for his customer by only investing when the "Economic Forecast" looked good. When questioned as to what economic forecast he subscribed to or by what means he determined a forecast himself, Mr. Nebenzahl could only answer that he invested "when the news was good".

Mr. Nebenzahl was then questioned regarding two additonal \$500.00 checks given to him on March 8, 1970 and April 3, 1970. In answer to such questions, Mr. Nebenzahl stated that these checks were also given to him to invest when the market was right and that they were deposited to his personal



checking account. He stated that the funds (\$1,000.00) represented by these checks were comingled with his own and not segregated in any manner. Furthermore, he did not keep any formal record indicating a balance due Mr. Siff.

When questioned as to if and when these funds were invested or returned to Mr. Siff, Mr. Nebenzahl stated that they were never invested or returned but were "absorbed" by him in the process of comingling Mr. Siff's fund with his own. Furthermore, he stated that he was aware that he was converting Mr. Siff's money to his own use or "borrowing the money" but anticipated being able to invest the money for Mr. Siff "when the economic forecast was right", by working on the cash flow of his business (i.e. "holding the rent back for a week or two"). On further questioning, Mr. Nebenzahl agreed that "a right economic forecast", as needed to make the investment of Mr. Siff's funds was, of course, based largely on whether or not he (Nebenzahl) had the money available.

Through further questioning it was determined that Mr. Siff had repeatedly questioned the disposition of his money and thereafter, on many occasions demanded that it be returned. Mr. Nebenzahl stated he has not returned the money to Mr. Siff nor has he invested it because he has not had the financial means to do so. He did however state he had within the past week and at Mr. Siff's suggestion entered into a repayment agreement whereby he has sent a check to Mr. Siff for \$250.00 (leaving a balance of \$750.00) and will continue to repay the balance.

As mitigation, Mr. Nebenzahl stated that he was forced to convert Mr. Siff's funds to his own use in order to continue the education of his two step-daughters at Post College. He explained that their natural father had

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agreed to pay their tuition and had done so on a weekly payment basis until early 1970. Unfortunately, at that time, their natural father had lost his job and was unable to continue payments. Mr. Nebenzahl stated that consequently, he had to bear the burden of tuition himself and had to find a way to meet the payments.

Mr. Nebenzahl was then questioned regarding a letter written by him on August 26, 1971, to Mr. Siff, which states in part "I will deeply appreciate if you do not do anything which will impair my ability to earn a living". Mr. Nebenzahl stated this letter was written in an effort to appeal to Mr. Siff not to disclose his actions to this Association or any other regulatory body.

Mr. Nebenzahl was then requested to answer questions regarding the accounts of several additional customer in whose accounts there appeared to be problems. He refused to answer such questions stating that he was not prepared to do so. He did however agree to meet with this examiner and Mr. Rosenfield again, at the Association's offices, prior to October 18, 1971.

The meeting was then dismissed.

Darold C. Brooks  
Staff Examiner



THE WASHINGTON STAR

PALAIS DES NATIONS

GENEVA - SWITZERLAND

CABLE ADDRESS: EVESTAR GENEVA

Jan. 16, 1969

Mr. Howard Stein  
(resident)  
The Dreyfus Fund  
2 Broadway  
New York, N.Y. 10004

Dear Mr. Stein:

I am appealing to you as President of the Dreyfus Fund because of the gravity of my complaint and also because all efforts to arouse lower levels have produced no result.

My wife and I have held shares in your company for over six years. We hold accounts nos. 617436, 617437 and 027916. Early last November we received a statement for account 027916 indicating that a partial liquidation had been made without our knowledge. We communicated immediately with The Bank of New York protesting against this sale. After a further exchange of letters we discovered just before Christmas that on two of our accounts, nos. 617436 and 027196 my signature had been forged and the accounts virtually liquidated. My total loss amounts to over 5,000 dollars. I sent a cable and a letter demanding explanations the same day to the Bank of New York. To this day there has been no reply to either.

Judging from the photostats of the requests and the endorsed checks, these were sent by the bank to Fabian Nebenzahl, a dealer through whom we had bought the shares in 1962. My signature had been forged on the requests and on the check endorsements. In fact, it bears no resemblance to my real signature. Because Fabian Nebenzahl had been negligent in forwarding my dividends for several years, The Bank of New York, upon my request, had assigned me another dealer, F.K. Kerpen, early last year. The forgeries took place after the change of dealers, at a time when all my connections with Fabian Nebenzahl had been severed. Under these circumstances, I cannot understand how your company could have honored a request of this magnitude from a total stranger and without even bothering to check the signatures.

The Dreyfus Fund enjoys a solid reputation and, I think, it should be capable of protecting its investors' basic interests and not hand their money over to the first crook without any questions asked.

(more)

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THE WASHINGTON STAR

PALAIS DES NATIONS

GENEVA - SWITZERLAND

RECEIVED NO. 10

page 2

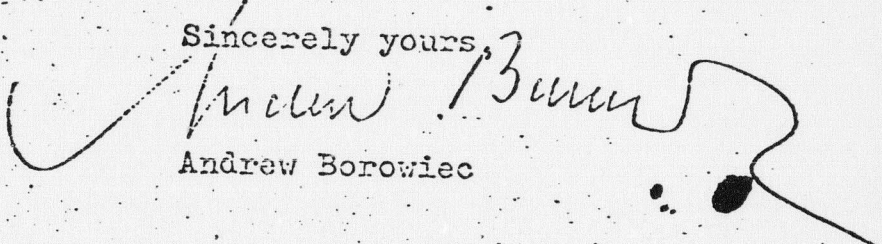
CABLE ADDRESS: EVESTAR GENEVA

At the time of purchase, we asked to be given the actual shares. This was refused, ostensibly because they would be safer held by the bank.

Obviously, the bank is not capable to act as a custodian of our investment and is not even interested in looking into this swindle. The fact that they did not reply to an urgent cable is ample proof of either their negligence or their collusion.

In view of all this, I urge you to reconstitute to me my holdings and to institute proceedings against the guilty party. I feel that the whole burden of fault lies with your company and its agents and it is therefore up to you to make full amends. I sincerely hope that you will not continue the practice of your agents of ignoring urgent letters and that I may look forward to a satisfactory reply by return mail.

Sincerely yours,

  
Andrew Borowiec



Mr. and Mrs. Andrew Borowiec  
12, Chemin Fleur D'Eau  
Anieres, Switzerland

Dear Tamar and Andrew:

I refer to the two withdrawals from Andrew's accounts with Dreyfus in the respective sums of \$2,986. and \$2,500. which I made without permission. I ask for understanding and patience on your part, as I have been living in a horrible state of mind ever since.

Financial pressures caused me to do what I did. To say that I am contrite and haunted by what I did is to put matters in the mildest form. The least I can do is make good, and I want to do this.

The situation briefly is as follows: I had been engaged in selling what essentially is a cattle-breeding program and been earning well at that. This was in connection with Black Watch Farms, a subsidiary of Barmec, Inc., of Wappingers Falls, New York. Some time prior to August 20, 1968 there was a change in program which caused a suspension of sales, which had the effect of cutting off the major source of my earnings. Subsequently, and effective January 8, 1969, there was a bar by reason of certain proceedings of the Securities and Exchange Commission (S.E.C.); and this latter bar had the same effect. Black Watch represented to me that this would be removed within 4 to 6 weeks, but I am assuming that it will be the end of this month of February before it is accomplished. I already have a number of good leads for sales, and feel confident within two months at the outside, after the bar is removed, I will have earned and received enough to make good to you. It is true that there are other cattle-breeding programs; but I am convinced that none is as good as Black Watch, and if I were now to abandon the Black Watch situation, I would not only be harming myself but also reducing my chances of making good to you quickly. I have less than \$500. in the bank, and no other assets of substance to which I can turn; and at the same time I have family support expenses to meet.

For all of these reasons, I earnestly beseech you to be patient with me until April 30th, 1969. By that time, I am confident I can make good to you. I know you are angry, and you have good cause. I beg you to give me this chance.

Sincerely,

*Fabian Nebenzahl*  
Fabian Nebenzahl

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Copy received 2/7/69

Fabian Nebenzahl

0000136



Free Kaper  
You will no longer be bothered by Shinkhouse

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS

ELAINE SHAINHOUSE,

Plaintiff,

-against-

FABIAN NEBENZAHL,

Defendant.

IT IS HEREBY STIPULATED AND AGREED by and between William Scheinberg, attorney for plaintiff, in the above action and Fabian Nebenzahl, the defendant in person, that the above entitled action be and the same is hereby settled for the sum of \$3,360.83 to be paid in the following manner:

1. Two Hundred Fifty (\$250.00) Dollars on or before February 10th, 1970.
2. A similar amount of Two Hundred Fifty (\$250.00) Dollars on or before the 10th day of each and every month until the full amount of \$3,360.83 has been paid.
3. In the event defendant defaults in making payment upon any due date, then in such event upon five days notice by certified mail, the plaintiff is hereby authorized to enter Judgment for the full amount less any payment received on account plus interest, costs and disbursements and plaintiff reserves the right to such provisional remedies as the law affords in the premises.
4. Upon payment in full plaintiff shall deliver a general release to defendant.

Dated: Brooklyn, New York  
February 5, 1970

William Scheinberg  
WILLIAM SCHEINBERG  
Attorney for Plaintiff.

Fabian Nebenzahl  
Defendant - in person



PS

I found the 2 Siff accounts - they are  
Dreyfus Leverage.

TELEPHONE  
(212) LEXINGTON 2-9595

F. K. KERPEN & COMPANY, INC.  
FINANCIAL PLANNING SPECIALISTS  
18 EAST 41ST STREET  
NEW YORK, N. Y. 10017

September 17, 1971.

Mr. Darold C. Brooks,  
Examiner, N.A.S.D., Inc.  
77 Water Street  
New York, NY 10005.

Dear Mr. Brooks:

Enclosed, please, find a copy of a letter to Mr. N.  
as requested.

The Siff business started like the others. I got a  
call from the client, informing me that he had given  
money to Mr. N. to invest in his account and that no  
confirmation or dividend notice had come forth, what  
was the story?

On re-reading the Borowicz letter to Mr. Stein, pre-  
sident of the Dreyfus Fund, I recall now that I dis-  
missed it - after not hearing further from Dreyfus  
or the Bank of New York - as a crank letter, the kind  
which are not infrequent in our business. There were  
rumblings, from Kudrle, the Fischer sisters (whom I  
knew on a social basis), but they were - after I  
checked with Fabian and got his assurance of errors,  
etc. - always followed by ample explanations of the  
clients, that everything was in the best order. The  
Fischer sisters, before I knew that they were Mr. N.'s  
clients, complained to me once about the persistence  
of one of my salesmen who tried to do business with  
them. When their accounts were transferred to my firm  
upon acquisition of Barron Helbig & Co., we discussed  
matters in general and they had the highest praise for  
Mr. Nebenzahl.

He is obviously a top-notch salesman, I don't have the  
vaguest idea of the source of this trouble.

Mr. Siff suggested turning the matter over to the Di-  
strict Attorney. When this threat elicited no response  
from N., he consulted me again. I had not heard from  
him either and suggested to Mr. Siff to threaten with  
disclosure to the NASD. He did just that. 0000152

If there is anything further you wanted me to do, please,

Sincerely,  
F. K. Kerpen



September 17, 1971.

Mr. Fabian Nebenzahl, C.L.U.  
110-06 101st Avenue  
Richmond Hills, N.Y., 11419.

Dear Fabian:

Your difficulties which, as you are well aware of, were known to me for some time, have now come to the attention of the National Association of Securities Dealers, the semi-governmental trade association of the securities industry.

When I heard no further from Dr. Shaynhouse's attorney after he withdrew the subpoena, or from Mrs. Shaynhouse, I assumed that you continued to straighten out that matter and I accepted your assurance that you would do the same with Mr. Jiff. While I hope that you will be able to do that, I have to tell you that you can no longer contact any of your clients or anyone else, to solicit business, accept orders, make offerings or represent that you are through this firm, or otherwise, a member of the NASD. By now they will probably have notified you of your suspension which precedes termination.

I urge you strongly to make good the damage caused to this a/o other clients. It'll permit you a voluntary resignation. This, for your future, would be preferable to expulsion with the attendant publicity.

Fabian, up to now I was able to assist you business-wise. I hope that, after you wind up this matter, you'll find an insurance connection in which your great selling talent will enable you to build again.

Please keep me informed, I wish you success.

Sincerely

Fred K. Kerpen

*Associates 13*  
*KAP*  
*April 11, 1974*

0000153



NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.  
DISTRICT BUSINESS CONDUCT COMMITTEE  
FOR DISTRICT NO. 12  
COMPLAINT NO. NY-1730

District Business Conduct Committee  
For District No. 12

Complainant

vs.

F. K. Kerpen & Co., Inc., Member  
18 East 41st Street  
New York, New York 10017

and

Fred K. Kerpen, Registered Principal

and

Fabian Nebenzahl, Registered Representative

Respondents

DECISION

DATED: May 31, 1974

The Complaint in this matter was filed by the District Business Conduct Committee on January 9, 1973 after a review of a special examination conducted at F. K. Kerpen & Co., Inc. Respondent Fabian Nebenzahl failed to answer the Complaint, notwithstanding actual receipt of a Second Notice of Complaint at respondent's residence on March 13, 1974. Respondents, Fred K. Kerpen and F. K. Kerpen & Co., Inc., submitted a combined response to the Complaint, dated January 19, 1973, in which they requested a hearing. On April 11, 1974, a hearing was conducted at the Association with Mr. Fred Kerpen in attendance, appearing without representation of counsel. Mr. Fabian Nebenzahl did not attend the hearing although a Notice of Hearing was sent by the Association to Mr. Nebenzahl, by certified mail, on March 30, 1974.

Upon review and consideration at an assembled meeting, the District Business Conduct Committee finds and determines as follows:

THE COMPLAINT

The Complaint alleges violations of various sections of the Rules of Fair Practice of the Association in three Causes of Complaint as follows:

1. Violations of Sections 1, 18 and 19(a) of Article III of the Rules of Fair Practice by respondent Fabian Nebenzahl in that, during the period from about August 15, 1968 to about April 3, 1970, while acting in the capacity of registered representative of F. K. Kerpen & Co., Inc., he engaged in a course of conduct which operated to deceive and defraud various public customers in that respondent, among other things:



- a. caused to be liquidated, on four separate occasions, shares of the Dreyfus Fund in the customer accounts of Andrew and Tamara Borowiec in a total amount of \$9,189.50 and, subsequently, came into possession of the four checks representing payment to the customers, appended the names of the customers to said checks, negotiated same and appropriated the funds to his own use and purposes, all without the knowledge and consent of said customers;
- b. received, on or about December 2, 1969, January 6, 1970, and February 5, 1970, three separate checks in the amount of \$500 each from Sandy Joel Siff, payable to respondent Nebenzahl, for the designated purpose of investment in the Dreyfus Leverage Fund, which monies were not thereafter transmitted promptly by respondent Nebenzahl to his employer or to Dreyfus, but instead were converted by Nebenzahl to his own use and purposes without the consent of the aforementioned customer;
- c. received, on or about March 8, 1970 and April 3, 1970, two separate checks in the amount of \$500 each from Sandy Joel Siff, payable to respondent Nebenzahl, for the designated purpose of investment in the Dreyfus Leverage Fund, which monies were not thereafter transmitted by respondent Nebenzahl to his employer or to Dreyfus, but instead were converted by Nebenzahl to his own use and purposes without the consent of the aforementioned customer; and,
- d. received, on or about February 6, 1970, two separate checks in the amount of \$7500 each from Morris and Olga Rutner, payable to the Bank of New York, for the designated purpose of investment in the Dreyfus Fund, which monies were not thereafter transmitted promptly or in total by respondent Nebenzahl to his employer or to Dreyfus, but instead were converted by Nebenzahl to his own use and purposes without the consent of the aforementioned customers.

2. Violations of Sections 1 and 27 of Article III of the Rules of Fair Practice by respondent F. K. Kerpen & Co., Inc., acting through respondent Fred K. Kerpen, for failure to properly supervise Fabian Nebenzahl in connection with his activities as outlined above.

3. Violation of Section 1 of Article III of the Rules of Fair Practice by respondent Fabian Nebenzahl for respondent's failure to contact the Association to arrange for a mutually convenient time and place for a meeting in order to discuss his activities while employed as a registered representative at F. K. Kerpen & Co., Inc., in disregard of a formal request submitted by the Association to Mr. Nebenzahl, dated October 22, 1971, and delivered by certified mail.



THE ANSWER

A combined response to the Complaint was submitted by Fred K. Kerpen on behalf of himself and F. K. Kerpen & Co., Inc., which was received at the Association on January 22, 1973. Mr. Kerpen acknowledged therein that he was aware of several complaints by Mr. Nebenzahl's clients concerning the disposition of their monies and/or failure to receive confirmations relating to purchases of Dreyfus Fund stock, but stated that he always contacted the aggrieved customers who reassured him that "everything was in the best of order." Mr. Kerpen also indicated that Nebenzahl's clients were always willing to give him an opportunity to make them whole; therefore, Mr. Kerpen did not see termination of Mr. Nebenzahl's employment as a necessary or desirable alternative.

As previously indicated, respondent Fabian Nebenzahl has not filed an answer. His failure to answer has, in this case, been considered, pursuant to Section 7 of the Code of Procedure for Handling Trade Practice Complaints, as an admission of the allegations contained in the Complaint.

BACKGROUND

F. K. Kerpen & Co., Inc. became a member of the Association on April 4, 1960. Over 90% of the firm's income has always been derived from the sale of mutual fund voluntary and contractual plans. The firm has no prior history of disciplinary proceedings with the Association.

At present, the firm's entire selling effort is administrated and performed by Mr. Kerpen; there are no registered representatives and Mr. Kerpen is the sole registered principal.

The firm's president and founder, Fred Kerpen, has earned a livelihood in the securities industry from sales and managerial positions since 1956. He is presently employed with respondent member firm and has not been the subject of any prior disciplinary proceeding by the Association.

Mr. Nebenzahl first entered the securities business in 1957, as salesman for Baron Helbig Co. After F. K. Kerpen & Co., Inc. acquired the Helbig Co. accounts in 1967, Mr. Nebenzahl joined the firm as a registered representative and was so employed until September, 1971. Mr. Nebenzahl is not presently employed within the securities industry and has not been the subject of any prior disciplinary proceeding by the Association.

FACTS, FINDINGS AND CONCLUSIONSFirst and Third Causes of Complaint  
Fraudulent Conversion of Customer Funds

Mr. Kerpen, in statements made during the course of the hearing, described Mr. Nebenzahl as an extraordinary salesman who was respected and trusted by his clientele, many of whom made their checks, intended for investment, payable to Mr. Nebenzahl. It appears, however, that their confidence was misplaced. The First Cause of Complaint outlines a variety of illicit activities engaged in by

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Mr. Nebenzahl, which included, among other things, misappropriation of customer monies and unauthorized endorsements of checks made payable to his customers.

Mr. Andrew Borowiec was a client of Mr. Nebenzahl and one of the several hundred accounts acquired from the late Baron Helbig by F. K. Kerpen & Co., Inc. On January 16, 1969, Mr. Andrew Borowiec complained to Mr. Howard Stein, President of the Dreyfus Fund, of unauthorized liquidations amounting to \$9,189.50 which occurred in his account and that of his wife. It appears that Mr. Nebenzahl fraudulently signed Andrew and Tamara Borowiec's names on requests for liquidations and on the resulting checks and deposited the proceeds in his personal account at Marine Midland Grace Trust Company. The Bank of New York, as custodian for The Dreyfus Fund, subsequently recovered the total amount so converted after negotiations with Marine Midland Grace Trust Company.

More than one client claimed that his funds had been converted by Mr. Nebenzahl. Sandy Joel Siff had given respondent Nebenzahl 3 checks of \$500 each on December 2, 1969, on January 6, 1970, and on February 5, 1970, to be invested in the Dreyfus Leverage Fund - the checks payable to Mr. Nebenzahl. The \$1500 was deposited, however, in Mr. Nebenzahl's personal account at Chemical Bank and commingled with his own funds. When Mr. Nebenzahl was questioned, during the course of the investigation, concerning the delay in transmitting the funds, he stated that he was waiting for the economic forecast to be right before investing Mr. Siff's money. On further questioning, Mr. Nebenzahl admitted that "the right economic forecast" meant when he had the money, since Mr. Nebenzahl never had enough money at one time in his personal account at Chemical Bank either to invest or return Mr. Siff's money. In fact, the actual deposit of \$1500 in the Siff accounts at Dreyfus represented the unauthorized appropriation of part of a \$7500 check given to Mr. Nebenzahl by another client, as further discussed below. Thereafter, Mr. Siff, in March and April of 1970, drew two more checks of \$500 each, payable to Mr. Nebenzahl, to be invested in the Dreyfus Leverage Fund. Instead, Mr. Nebenzahl deposited the checks into his personal account at Chemical Bank and neither invested nor returned the \$1000 to Mr. Siff.

In addition to the conversion of Mr. Siff's and Mr. Borowiec's funds, a further review of Mr. Nebenzahl's file at F. K. Kerpen & Co., Inc. disclosed receipt of oral complaints from Morris and Olga Rutner concerning the disposition of two checks of \$7500 each, payable to the Bank of New York, to be invested in the Dreyfus Fund for the exclusive benefit of the Rutners. Statements of the Rutners' accounts issued by the Dreyfus Fund, through its agent, the Bank of New York, indicate that only \$11,000 was invested as directed. A check drawn by Olga Rutner for \$7500, dated February 4, 1970, which bears the Siffs' account numbers at Dreyfus; the Rutners' customer statements; and a letter forwarded by Fabian Nebenzahl to F. K. Kerpen & Co., Inc., dated February 9, 1970, which contained instructions for the disposition of the check, show that \$6000 was invested in the Rutner accounts on February 25, 1970 and \$1500 was invested in the Siff accounts on February 11, 1970. The other check for \$7500, dated February 6, 1970, which was also given to Mr. Nebenzahl by the Rutners, was deposited in the Rutner accounts at Dreyfus on March 10, 1970 to the extent of \$5000 - \$2500 was deposited in another account, the owner of which is unknown.



After review of all of the evidence presented at the hearing, we conclude that respondent Nebenzahl committed the acts complained of in the First Cause of Complaint. Mr. Nebenzahl induced the purchase of or caused the liquidation of securities in a manner calculated to defraud customers of their funds or securities in violation of Sections 1, 18 and 19(a) of Article III of the Rules of Fair Practice. Such conduct is inconsistent with high standards of commercial honor and just and equitable principles of trade.

Failure to Comply with Formal Request

Mr. Nebenzahl was formally requested, in writing, on October 22, 1971 to contact the Association to arrange for a mutually convenient time and place for a meeting. Mr. Nebenzahl made no apparent attempt to comply with the formal request. In fact, subsequent correspondence, sent to Mr. Nebenzahl by certified mail, was unanswered or was returned to the Association, marked with the Post Office stamp designation, "Moved, Left No Address."

Mr. Nebenzahl, by failing to comply with the formal request, has violated Section 1 of Article III of the Rules of Fair Practice and has acted in a manner inconsistent with high standards of commercial honor and just and equitable principles of trade.

Second Cause of Complaint  
Failure to Properly Supervise

The testimony at the hearing clearly indicates that Mr. Fred Kerpen, registered principal of F. K. Kerpen & Co., Inc., responsible for supervision of Mr. Nebenzahl, was aware of many problems that customers were having concerning the disposition of their funds entrusted to Mr. Nebenzahl. A copy of Mr. Borowiec's letter to Howard Stein, President of the Dreyfus Fund, was found in the member's files; a copy of a Stipulation of Settlement and an affidavit of facts appended to a default judgement rendered against Mr. Nebenzahl by a client, Elaine Shainhouse, for conversion of monies, was also found in the member's files. Mr. Kerpen, in a letter to the Association, dated September 17, 1971, admitted that there were other clients of Mr. Nebenzahl who had complained to him about the disposition of their money by Mr. Nebenzahl; specifically, the customers named by Mr. Kerpen were Mr. Siff, Mr. Kudrle, and Mabel and Margaret Fischer.

In his Answer to the Complaint, and in the course of the hearing, Mr. Kerpen emphasized, in mitigation of the charge of failure to properly supervise Mr. Nebenzahl, that, after receipt of each customer complaint, he always checked with Mr. Nebenzahl and the customer who reassured Mr. Kerpen that the matter had been straightened out and everything was fine. Even Elaine Shainhouse withdrew a garnishment of Mr. Nebenzahl's wages because, as Mr. Kerpen indicated, Mr. Nebenzahl promised to Mrs. Shainhouse's lawyer that he would make good. As far as Mr. Borowiec's letter to Howard Stein was concerned, Mr. Kerpen stated that he believed the letter to have been written by a crank, and that, since he had acquired several hundred accounts from the late Baron Helbig, he wasn't even aware that Mr. Borowiec was one such account.



Mr. Kerpen seemed willing to overlook problems Mr. Nebenzahl was having with his customers as long as the customers themselves were willing to give Mr. Nebenzahl a second chance. This attitude stemmed in part from Mr. Kerpen's admiration of Mr. Nebenzahl's selling abilities as well as from a desire not to deprive Mr. Nebenzahl of a livelihood, since Mr. Nebenzahl was in failing health and had recently married a woman with three children. In only one instance did Mr. Kerpen take a firm stance upon receipt of a customer complaint in August, 1971. The customer, Mr. Sandy Joel Siff, was directed to contact the Association for assistance. About a month thereafter, Mr. Nebenzahl was encouraged by Mr. Kerpen to submit a "voluntary resignation," following commencement of a special examination by the Association concerning Mr. Siff's complaint.

Mr. Kerpen was lax and negligent in the performance of his duty to supervise Mr. Nebenzahl, whose illicit activities caused several customers to suffer a financial loss. By his own admission, he was aware of problems customers were having with the disposition of their monies by at least February, 1970; yet, almost two years passed before Mr. Kerpen encouraged Mr. Nebenzahl to submit a "voluntary resignation."

Mr. Kerpen seemed to have been awed by the selling talents of his registered representative, a man Mr. Kerpen described as an extraordinary salesman who could persuade his clients to draw checks payable to him. Perhaps this admiration, coupled with the sluggish, unencouraging character of the marketplace, caused Mr. Kerpen to "look the other way" in the hope that his salesman and the market would improve.

We acknowledge the apparent honesty and cooperation that Mr. Kerpen has demonstrated, not only during the investigation of the customer complaints concerning Mr. Nebenzahl's activities, but also in answering fully and without reservation any questions posed by the Committee. Our primary concern, however, focuses on Mr. Kerpen's ability to supervise and direct the activities of salesmen, many of whom like Mr. Nebenzahl, may be capable of engendering in the minds of employer and customer alike, a false sense of accomplishment and security.

The concern of the Committee, which seeks to prevent a recurrence of Mr. Kerpen's negligent conduct in failing to adequately supervise Mr. Nebenzahl's activities as salesman, finds its expression in three recommendations formulated by the Committee and which are remedial in nature. To insure compliance, these recommendations are incorporated in the Penalty. We have considered and rejected a more stringent penalty which would cause Mr. Kerpen to forfeit his status as registered principal, since we believe such a decision would be unnecessarily severe in view of Mr. Kerpen's honest and forthright presentation to the Committee and considering that such determination would, for all intents and purposes, abolish Mr. Kerpen's livelihood.

We conclude that the charges asserted against Mr. Kerpen are, without a doubt, supported by the evidence presented at the hearing. Mr. Kerpen failed to act in a manner designed to assure registered representative Nebenzahl's compliance with the Federal Securities laws and the Rules of the Association. Such conduct is in violation of Sections 1 and 27 of Article III of the Rules of Fair Practice and is inconsistent with high standards of commercial honor and just and equitable principles of trade.



PENALTY

Based upon the foregoing, it is the decision of this Committee that the following penalties be imposed:

1. that respondent, Fabian Nebenzahl, be permanently barred from association with any member in any capacity, fined \$25,000, and assessed the costs of this proceeding in the amount of \$ 99.00; and,
2. that respondents, F. K. Kerpen & Co., Inc. and Fred K. Kerpen, each be censured and jointly and severally assessed the costs of this proceeding, in the amount of \$ 99.00; and,
3. that respondents, F. K. Kerpen & Co. and Fred K. Kerpen are directed to:
  - a. formulate and submit to the District No. 12 staff, in the event that representatives are registered or are to be registered with this Association, and in the latter case, prior to filing the Application for Registration, comprehensive supervisory procedures which specifically provide for investigation of the background of any employed or prospective registered representative and periodic review of all customer accounts managed by each salesman; and,
  - b. hold pre-employment discussion with the District No. 12 staff concerning the qualifications of prospective sales personnel and review the precise supervisory procedures to be followed for each registered representative employed; and,
  - c. submit monthly to the District No. 12 staff, for a period of three years from the date this Decision becomes final, a written summary of all oral and written customer complaints received by F. K. Kerpen & Co. and evidence of all remedial action taken.

DISTRICT BUSINESS CONDUCT COMMITTEE  
FOR DISTRICT NO. 12

BY: R. J. [Signature]

For the Committee



1  
2 MR. RINKER: The record indicates  
3 that a review of Mr. Nebenzahl's file at your  
4 firm discussed the receipt of oral complaints  
5 from Morris and Olga Rutner concerning two  
6 checks.

7 MR. KERPEN: Yes.

8 MR. RINKER: When did that take place?

9 MR. KERPEN: About the time Mr. Ziff  
10 made the complaint, the same complaint.

11 MR. RINKER: This would have been in  
12 early 1970?

13 THE CHAIRMAN: '69 or '70.

14 MR. KERPEN: Not '69. May have been  
15 '71. I believe it was '71 but I can check in my  
16 records on that.

17 MR. RINKER: Well, I think that the  
18 first check for \$7500 was dated February 4, 1970  
19 for Mrs. Rutner.

20 MR. KERPEN: I didn't know anything  
21 about that check. All I knew was that Nebenzahl  
22 sent one of the two checks to me and I showed at  
23 the last meeting my having passed it on to the  
24 Bank of New York the day it was received.

25 MR. RINKER: What I'm trying to deter-

BLITZ-LORBER REPORTING CO.

15 PARK ROW, N.Y. 10038

PHONE: 349-5790

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1  
2 mine is when the complaints which showed up  
3 in his file were actually received.

4 MR. KERPEN: Are you speaking of  
5 the oral complaint of Rutner?

6 MR. RINKER: Yes.

7 MR. KERPEN: I never met them. If  
8 there was a complaint, and there were from  
9 Mrs. Rutner several times on the phone.

10 MR. RINKER: To whom?

11 MR. KERPEN: To me. But that was  
12 after Ziff had already complained and I told Ziff  
13 to go to the NASD. Because I knew --

14 MR. RINKER: Her complaint was some-  
15 time after your checks were drawn?

16 MR. KERPEN: Quite a while.

17 MR. RINKER: A year after?

18 MR. KERPEN: Possibly. Possibly. I  
19 found out from the complaints that they have given  
20 many checks, I knew it from conversation with me  
21 too, that they had given many checks, I didn't ask  
22 when, how much.

23 MR. RINKER: And --

24 MR. KERPEN: I don't want to sound as  
25 if I didn't care, given checks, what happened to



1  
2 them. But by that time, I had already turned  
3 to my Association and I had asked Mr. Ziff about  
4 it.

5 MR. RINKER: I think you are aware  
6 that the things in the record have a tendency to  
7 indicate that there were a greater number of  
8 complaints than we would usually accept against  
9 one person.

10 MR. KERPEN: Yes.

11 MR. RINKER: It took some time to  
12 realize that this person was not operating  
13 properly.

14 MR. KERPEN: It took some time and  
15 the nature of the complaint was always such, that  
16 it was voluntarily on the part of the complainants  
17 revoked, they called me, Cotterly called me and  
18 I met him later once, that "it was a mistake that  
19 I called you, I didn't understand it, Nebenzahl  
20 explained it to me, everything is fine, everything  
21 is O.K."

22 Now, this is what put me at ease.  
23 Until the Shanehaus case came along where I  
24 definitely knew that the man was in trouble,  
25 I didn't want to drop him, I didn't -- I didn't

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1  
2 want to throw him to the wolves as I say, and he  
3 did make good and then I got the attachment from  
4 Shanehaus' lawyer and a week later, I got the  
5 release with the attachment, so things were going  
6 on again.

7 But I knew nothing about Ziff and  
8 nothing about Rutner at that time. I had no com-  
9 plaints of that at that time.

10 MR. RINKER: Have you redrafted your  
11 supervisory procedures so that any new employees  
12 or any present employees will clearly understand  
13 that they are not to handle funds?

14 MR. KERPEN: I did not deem that  
15 necessary, because none of my employees -- they are  
16 not employees, they are independent contractors --  
17 has handled funds other than sometimes coming in  
18 with \$100 or \$200 in cash, as the down payment,  
19 the first payment, first two months' payment on  
20 the contractual.

21 When an order was placed and I was  
22 trading up to the end of May, I billed the  
23 customer, the customer paid me and I paid the  
24 fund, over-the-counter firm which I was trading  
25 so there was no need for any changes. There was



1  
2 never any irregularity.

3 THE CHAIRMAN: One question.

4 You say you have the written procedures.  
5 Do the independent contractors get a copy of this  
6 themselves?

7 MR. KERPEN: Yes, a long time ago.  
8 Because they have been in my file the last three  
9 or four inspections and I have frequent inspections.

10 THE CHAIRMAN: Each one of them has  
11 the copy of that?

12 MR. KERPEN: Yes, give them a copy at  
13 one time or another.

14 MR. RINKER: No further questions.

15 THE CHAIRMAN: Mr. Barnes.

16 MR. BARNES: Mr. Kerpen, you never  
17 really directly answered Mr. Rinker's question  
18 about the date of the Rutner's oral complaint to  
19 you.

20 MR. KERPEN: I cannot answer that  
21 because I didn't make, I didn't make a note when  
22 they called me. I can only place it in time.  
23 Subsequent to Mr. Ziff's complaint.

24 Now, when Mr. Ziff complained is in  
25 the record, I can look it up, but it's in there.



1  
2 Now, prior to that, I didn't know  
3 who Rutner was, it was just an account. Subse-  
4 quent to that, Mrs. Rutner called, and said,  
5 "I've given him some money, where is it? Never  
6 got a receipt." Because at that time, the thing  
7 was in motion.

8 MR. BARNES: Did you receive the  
9 Rutners' oral complaint prior to the Shanehaus  
10 attachment?

11 MR. KERPEN: That is something I  
12 have to look up. Possibly -- no, I didn't --  
13 it would have to be afterwards, because the  
14 Shanehaus, let me see when the Shanehaus --

15 THE CHAIRMAN: October, 1970.

16 MR. KERPEN: Then it was subsequent  
17 to that. It was -- let's find out when I first  
18 spoke to Mr. Ziff. Because that was the bombshell  
19 and that was when I advised Mr. Ziff to contact  
20 the Association.

21 He first threatened to go to the  
22 district attorney and I discouraged him from doing  
23 so without getting the facts.

24 Subsequently, the Rutners called me.  
25 Mrs. Rutner. It was sometime in July, '71.



1  
2 There's a letter, September 1, '71, to John  
3 Cavallo, by myself in which I said that  
4 Mr. Nebenzahl has diverted funds, so he must  
5 have told me before that. After that the  
6 Rutners called.

7 There's a letter by Mr. Cavallo  
8 dated August 30, '71, which states that the  
9 Association has received a complaint by Mr. Ziff,  
10 for having given, for Nebenzahl, having given him  
11 \$500 each in March, '70 and in April, '70, which  
12 I have no idea, given him the checks. Said, "I'll  
13 keep them here until the market gets better and  
14 I'll put them in."

15 But I knew nothing about that.

16 MR. BARNES: What I'm trying to get  
17 is a time sequence, because it seems to me that  
18 what the Board is interested in is did you receive  
19 enough indications of interest of -- excuse me,  
20 interested customers who may have been damaged  
21 by Nebenzahl's activities prior to your taking  
22 any effective action with Mr. Nebenzahl or not?

23 MR. KERPEN: I had the experience  
24 with Fisher, as corrected in her letter, a little  
25 different from the way I recorded it. With



1  
2 Mr. Cotterly and amply corrected by him on the  
3 phone. The complaints amply corrected and I had  
4 the Shanehaus case.

5 Now, the Shanehaus case is the one  
6 where I was aware that -- of the difficulties,  
7 great difficulties. And I may be able to track  
8 down when it began.

9 Other than that, I knew nothing until  
10 the summer of '71 when Mr. Ziff called me up and --

11 MR. RINKER: When did he call you?

12 MR. KERPEN: Sometime in July or August,  
13 '71. Because I advised him to write to the NASD  
14 which he did. And then I wrote to Mr. Llewellyn  
15 telling me that Mr. Ziff had complaints.

16 Now, the Shanehaus complaint goes back  
17 further. The Shanehaus complaint goes back to the  
18 end of '70.

19 MR. BARNES: Mr. Kerpen, could I ask  
20 you a question. As part of the Association's  
21 exhibits, we have the judgment obtained by Elaine  
22 Shanehaus against Fabian Nebenzahl and there was  
23 subsequently an attempt to execute on that judg-  
24 ment served upon you, and as part of the affidavit  
25 of facts constituting the claim and upon which



1  
2 default judgment was obtained, it's stated that  
3 money had been received by defendant and for  
4 fraudulent conversion of monies given to defendant  
5 for the purpose of buying mutual funds, and I just  
6 am wondering that when you received a copy of  
7 this, despite the fact that it was released some  
8 three weeks later, what action did you take  
9 because that seems to be a very serious basis  
10 to obtain a judgment on.

11 MR. KERPEN: What is the date of  
12 that?

13 MR. BARNES: The default judgment was  
14 entered October 14, 1970.

15 MR. KERPEN: Yes. Yes.

16 Well, at that point, I knew that there  
17 was something wrong. But Mrs. Shanehaus has  
18 assured me that she would prefer to work it out  
19 with Nebenzahl, let him earn some money and that  
20 is why she withdrew the attachment.

21 But then I knew there was something  
22 wrong obviously.

23 MR. RINKER: I think, Mr. Chairman --

24 THE CHAIRMAN: Yes, Mr. Rinker.

25 MR. RINKER: I think that's the



1  
2 crux of the whole thing, is, Mr. Kerpen, why  
3 at that point you didn't report him to the  
4 Association or sever him and report that as a  
5 cause of action.

6 This I think is the whole problem.

7 MR. KERPEN: I feel that it was  
8 more important to salvage a human being than --  
9 at that time he was the well-regarded CLU with  
10 good standing in the community. He had had a  
11 heart attack. He had married a woman with three  
12 kids.

13 He was obviously in trouble and I  
14 could have gone ahead and then as I said threw  
15 him to the wolves. He pleaded with me. Miss  
16 Shanehaus said let's let him stay. He promised,  
17 he came in and promised to make good.

18 He got continuously commission checks  
19 from me, on voluntary accounts that just kept on  
20 putting money in. And I let him, I gave him the  
21 checks as they were due.

22 Had I cut him off then, I would have  
23 been better off because I would have kept the  
24 commissions.

25 THE CHAIRMAN: You let him ride along



THE DREYFUS SALES CORPORATION • UNDERWRITERS OF THE DREYFUS FUND INCORPORATED

January 21, 1969

Mr. Fred K. Kerpen  
F. K. Kerpen & Co.  
18 E. 41st Street  
New York, N.Y. 10017

Dear Mr. Kerpen:

RE: Andrew Borowiec

As per our telephone conversation of today, I am enclosing a copy of the letter which Mr. Stein received from the above-mentioned investor.

We have instructed one of the Officers at The Bank of New York to personally investigate this matter. As soon as we hear from him we will be in touch with you.

Very truly yours,

*Marcia Aron*

Marcia Aron  
Director of Investor Relations

MA/ms  
Enc.

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Fred K. Kerpen were ordered to formulate and submit to the District No. 12 staff, in the event that representatives are registered or are to be registered with this Association, and in the latter case, prior to filing this Application for Registration, comprehensive supervisory procedures which specifically provide for investigation of the background of any employed or prospective registered representatives and periodic review of all customer accounts managed by each salesman; hold pre-employment discussions with the District No. 12 staff concerning the qualifications of prospective sales personnel and review the precise supervisory procedures to be followed for each registered representative employed; and submit monthly to the District No. 12 staff, for a period of three years from the date this Decision becomes final, a written summary of all oral and written customer complaints received by F. K. Kerpen & Co., Inc. and evidence of all remedial action taken.

The District Committee found that respondent Nebenzahl had, during the period from about August 15, 1968 until April 3, 1970, as a registered representative of F. K. Kerpen & Co., Inc., engaged in a course of conduct which operated to deceive and defraud public customers, by his causing to be liquidated on four separate occasions shares of the Dreyfus Fund in the accounts of his customers, Andrew and Tamara Borowiec, and by his further unauthorized conversion of the funds received therefrom to his own use. Furthermore, he received on December 2, 1969, January 6 and February 5, 1970, three separate checks payable to him in the amount of \$500 each from his customer, Sandy Joel Siff, ostensibly for the purpose of investing in the Dreyfus Leverage Fund, which monies were converted to his own use without the customer's consent. Additionally, Nebenzahl received on March 8 and April 3, 1970, two separate checks made payable to him in the amount of \$500 each from Sandy Joel Siff, said monies given for the designated purpose of investing in the Dreyfus Fund, which monies were converted to his own use without customer consent. Finally, he received on February 6, 1970, two separate checks in the amount of \$7,500 each from Morris and Olga Rutner, payable to the Bank of New York, for the designated purpose of investing in the Dreyfus Fund, which monies were subsequently converted to his own use without consent of the aforementioned customers. Additionally, the District Committee found that Nebenzahl failed to respond to a formal written request to contact the Association to arrange for a mutually convenient time and place for a meeting to discuss his activities. The District Committee found the aforementioned conduct to be violative of Article III, Sections 1, 18 and 19(a) of the Association's Rules of Fair Practice and inconsistent with high standards of commercial honor and just and equitable principles of trade.



The District Committee also found that the member, acting through respondent Fred K. Kerpen, failed to properly supervise Nebenzahl in connection with the activities described above, in violation of Article III, Sections 1 and 27 of the Rules of Fair Practice, which conduct also violated high standards of commercial honor and just and equitable principles of trade.

As noted earlier, respondent Kerpen and the member appealed the Decision of the District Committee. A hearing in the matter was held before a Subcommittee of the Board of Governors in New York City on September 5, 1974. Fred K. Kerpen testified at the hearing on his own behalf and on behalf of the member.

At the hearing, Kerpen stated that he believed he had acted properly with respect to Nebenzahl's activities and that he did not believe he should be censured for activities which were concealed from him by Nebenzahl and which he had no way of discovering. He testified that it was not until approximately July of 1971 that customer Siff complained directly to him, and right after that the Rutners complained. Before that time he stated he had no knowledge of the misuse of these customers' monies. With respect to customers Borowiec, he stated that while Dreyfus had mailed him a copy of a letter outlining these customers' complaints, he was lulled into failure to take affirmative action by Dreyfus, and it was not until the initiation of the Association's investigation that he became aware of the extent of Nebenzahl's activities with Borowiec. Kerpen did admit that he knew Nebenzahl had converted a customer's monies intended for mutual fund purchase at least as early as February of 1970, and probably earlier, but it wasn't until later that the customer, Shainhouse, served him with an attachment which was released by an attorney for Shainhouse very shortly after service. With respect to the Shainhouse conversion, he stated that he had tried to work out a satisfactory settlement with Shainhouse and Nebenzahl for repayment of the monies due to Shainhouse, and felt this was preferable to termination of Nebenzahl and consequently inhibiting his monetary ability to repay these amounts to that customer. In retrospect, he admitted that he had been too lenient. Upon questioning, Kerpen admitted that he had no provision in his written supervisory procedures which would prohibit his representatives from accepting cash for purchases, because he said it was impractical. He also stated that despite the intervening complaint, he has not drafted new supervisory procedures with this prohibition because "it isn't necessary". In essence, Kerpen stated that he had been lulled into believing that the Borowiec complaint had been successfully resolved by Dreyfus and this was the reason he had failed to follow up on this complaint or examine other accounts



of Nebenzahl's with the member. He stated Siff and the Rutners did not complain until July of 1971, and he pointed out that he had thereafter terminated Nebenzahl in September of 1971. He admitted that while he had been lenient with respect to Nebenzahl's activities with Shainhouse, he believed that it was in the customer's best interest to attempt to work out some monetary settlement.

We have carefully considered the entire record, and we believe the District Committee's findings are proper and they are hereby affirmed. In our review, we have carefully examined the chronology of events, and while we believe that Kerpen might possibly have been justified in overlooking the Borowiec complaint in light of the activities of the Dreyfus Fund in attempting to resolve that complaint, nevertheless he clearly was put on notice in early 1970 of Nebenzahl's proclivity for converting monies intended for investment by means of the Shainhouse complaint. This complaint, coupled with the earlier complaint involving Borowiec, should have necessarily prompted a thorough investigation by Kerpen and a thorough review of all of Nebenzahl's accounts and activities. In this connection, we note that Kerpen admittedly failed to review any of these accounts. It is our opinion that such a review would probably have brought the conversions to light at an earlier date and might have prevented some of the later Siff and Rutner conversions. We also note that even as late as the hearing before our Subcommittee, Kerpen had failed to draft new supervisory procedures that would prohibit his representatives from accepting cash for purchases, and he contended such procedure was not necessary, notwithstanding the pendency of this matter. We believe that such a lax attitude by a registered principal of a member responsible for supervision of representatives can in no sense be tolerated, particularly where, as here, extensive damage has occurred to public customers. Such an attitude reflects adversely on the securities industry at large and raises doubts as to its effective functioning and its integrity in the minds of the investing public. We, therefore, believe the public interest requires that we fashion our penalties to more adequately reflect our concern and to impress upon Kerpen his obligations with respect to meaningful supervision of all sales activities.

In light of these considerations, we affirm the bar in any capacity, \$25,000 fine and assessment of \$99 in costs upon Nebenzahl, as well as the censure of respondent member. As to the restrictions upon the member and upon Kerpen, we do not believe such are necessary and we eliminate them

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since they are obligations imposed upon both by virtue of their registrations with the Association. As to Fred K. Kerpen, we believe the penalties should be increased to censure and a ten-day suspension. The suspension shall commence upon a date to be set by the President of the Association. We also assess costs of this appeal in the amount of \$262.41 upon the member and Kerpen, jointly and severally.

On Behalf of the Board of Governors,

By

Donald H. Burns  
Donald H. Burns, Secretary

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TELEPHONE  
(212) LEXINGTON 2-0505  
267-2912

F. K. KERPEN & COMPANY, INC.

FINANCIAL PLANNING SPECIALISTS

~~18 EAST 41ST STREET~~ 150 Broadway  
NEW YORK, N. Y. 100138

RECEIVED  
OFFICE OF THE SEC

APR 14 1975

April 5, 1975.

Mr. George Fitzsimmons  
Secretary  
Securities & Exchange Commission  
Washington, D.C.  
20006.

Dear Mr. Fitzsimmons:

Mr. Andrew McR. Barnes, Assistant General Counsel of the National Association of Securities Dealers, was good enough to instruct me that an aggrieved party of an NASD decision may turn to the Securities and Exchange Commission and that such appeal is to be addressed to the Secretary of the Commission.

Accordingly I herewith

A P P E A L

the decision of the Board of Governors, Complaint # NY-1730, District # 12, dated March 11, 1975.

This matter hinges on the ability of the human mind to deal with a set of facts at one point in time after another set of facts has entered a situation - without being influenced by the new facts. Such might transcend its capacity. Concretely, I won't have to dwell on Nebenzahl's image as to reputation, knowledgeability, expertise, association in his area of endeavor and professional standing. I will, however, have to re-assess the Borowicz letter, my reaction or lack thereof, and the position of and relationship to the fund involved.

How can a man assert that a custodian bank accepted forged signatures and did nothing when the fact was called to its attention, (by letters, cables, etc.) - and be right ??? There is a simple contradiction in the Borowicz letter when he writes that signatures had been forged since 1962, then further on states that forgeries had taken place after the change of dealers "which he requested". In fact, Nebenzahl was a Registered Representative with Baron Helbig, whose business I bought after Mr. Helbig's death. I'm not

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page 2  
Fred K. Kerpen  
to Secretary of S.E.C.

out to point to contradictions and inaccuracies, Mr. Borowics' ignorance of the world of equities is no greater than that of the general public. But the allegations are so phantastic as to be unreal, the accusations against the custodian bank outside the realm of the possible and the alleged forgeries (which turned out to be so true) so unlikely, that my frame of mind could not accept them as happening to an intelligent newspaperman - against Nebenzahl's image. What a mistake that turned out to be ! I must ask the question again: Had there been the faintest possibility of even a shadow of anything being real about the situation, wouldn't I have thrown away the evidence, rather than keep it in my file?

In one of my letters to Mr. Barnes during the proceedings (dated August 16, 1974 and part of the record) I asked that Dreyfus be invited to throw light on the total absence of a follow-up to sending me the copy of the B. letter. I asked the question again in the next to concluding paragraph of my appeal to the Board of Governors and explained again in paragraph 4, page 2, how I would have had to learn the background facts of the B. letter and didn't. It may be infamy on a personal level to conceal fraud from a fellow NASD member, but is it consistent with the standards of commercial honor and just and equal principles of trade?

I am not attempting to get Dreyfus penalized (the bank is insured against fraud and there is no further recourse needed), I'm trying to reconstruct, or rather help reconstruct, a situation which justifies, or at least makes plausible, my action or rather inaction. Once this is accepted - and I'm fully aware of the fact that not everyone will accept it - a picture emerges which is at least plausible in human terms. It does not discharge me from having made an error of judgment but it should obviate the meting out of cruel punishment. Everything else follows as outlined in the complaints, the appeal and the supporting documents.

Dreyfus' 1974 yearend statements contain about 2 dozen account confirmations (enclosed as exhibit A) showing Nebenzahl or # 1184 (his number) or both as Representative. Anybody familiar with the attrition which took place in our business in the last few years can imagine how many more accounts there were in 1969, 1970, 1971 a.s.o. Not only that: These confirmations came through at least 4-times a year. But if one arm of the fund didn't notice while the other was busy recouping fraudulent damage, please look at half a dozen commission statements (exhibit B-1 to B-6) I have culled at random from 1969, 1970 and 1971 files. Could I possibly assume that a fund would continue to do business with a crook, while making good the damage he caused, and with a dealer who employed that crook?

I say I could not. Again I'm not trying to be vengeful but I have to take exception to the decision's stance that " I was lulled into failure to take affirmative action by Dreyfus".

The Borowics matter simply did not exist for me anymore.



It being eliminated it could not revive when the Shainhouse troubles started. To-date Dr. Shainhouse did not prefer charges. Nebenzahl used some of his money for his own purposes and then tried to make good. At this point I still maintain that it is more important to salvage a human life (which at that time seemed possible), than to put the stamp of criminality on a little guy. Unfortunately he turned out -- much later -- to be a big crook.

There are some points in the Decision which need clarification. It states: "Upon questioning, Kerpen admitted that he had no provision in his written supervisory procedures which would prohibit his representatives from accepting cash for purchases." Being honest and having surrounded myself with a group of honest people there simply is no need for such a provision - unless it were required by law or regulation. If people want to be dishonest, that can falsify check signatures, withdrawal requests, or have checks made out to themselves as has been seen. It was impractical as we had little cash business, the main exception being \$ 50 or 100 or thereabouts as first payments together with contractual plan applications. My small group has been reduced to two members and will probably be entirely eliminated by year end. ~~Being honest and having surrounded myself with a group of honest people there simply is no need for such a provision - unless it were required by law or regulation. If people want to be dishonest, that can falsify check signatures, withdrawal requests, or have checks made out to themselves as has been seen. It was impractical as we had little cash business, the main exception being \$ 50 or 100 or thereabouts as first payments together with contractual plan applications. My small group has been reduced to two members and will probably be entirely eliminated by year end.~~

The Decision is much harsher with me when it notes: "As late as the hearing before our Subcommittee, Kerpen had failed to draft new supervisory procedures that would prohibit his representatives from accepting cash for purchases!" Does this mean that there is a provision which forces a dealer to prohibit his representatives from accepting cash? If so, I'm ignorant of it. If not, the decision casts a aspersions on the two remaining members of my salesfamily and imputes poor judgement on my part concerning them. Here is why I said the drafting of new supervisory procedures was not necessary: By the time the proceedings were held business had virtually stopped and so had the representatives' activities. There were no sales, the Reps. didn't come to the office anymore, they didn't call in, they didn't solicit or even attempt to solicit business anymore; they were what in the trade is called: Bodies.

Exhibit C shows supervisory procedures which a dealer must keep on record. In the 15 years I have been in business as dealer about half a dozen young men from the NASD came to my office, asked me to show them the piece of paper on which the procedures are typed and then turned to other matters while I put the paper back into the appropriate file. Does the Board of Governors mean to say that - had I typed up another sheet of paper with added or modified procedures - and put it into my file drawer, fraud possibilities would be reduced or eliminated? I stand up for any of my Registered Representatives, invite their examination and reject the implication that the failure to add or modify procedures (as to their judgement - notwithstanding a colossal exception) and reject the implication that failure to



put a written piece of paper into my file drawer (after reading it to the people concerned) reflects a lax attitude. If a custodian bank and a mutual fund organization can disregard accusations of fraud and forgery and withhold information thereon from the dealer involved without being branded lax, how can the Board of Governors tell a dealer, betrayed and defrauded, to revise his judgment, in order to escape the epithet of laxness? And punish him without even calling the others on the carpet?

The penalty is being fashioned to impress upon me the obligation I have with respect to a meaningful supervision of all sales activities. At the time of the subcommittee hearing there were only two men left who showed any activity. A retired army colonel and former broker/dealer and an attorney with a federal agency - both part-timers (full-knowledge part-timers that is). The activity consists in residual income from some payroll plan deductions, a few voluntary accounts and payments into a few existing Keogh accounts. I have kept them registered so that I may pay them the commission they deserve. It shrinks fast and consistently. All others have been de-registered as of the end of calendar year 1974.

And myself? As is known to the Association I'm now a part-time, full-knowledge dealer (in contrast to the many dealers, particularly those coming out of the life insurance field who have a very limited knowledge and understating of equities, but who seem acceptable as they produce business). Business has deteriorated to an extent that I was forced, after resorting to a mailing address and telephone answering service, to work for someone else to make a living. I joined a reputable municipal bond house.

That is not to say that I neglect my business duties such as they are. One or two phone calls a week still come in - how to liquidate funds, help in understanding account statements, assistance in figuring out tax liability and the like. Filling out the numerous forms keeps me busy evenings and weekends. The enclosed letter from Mrs. Nettie Feit ( D ) is a good example. It was answered by 'phone. Another example is my letter to Mrs. Shirley Brown ( F ); as are the correspondence with various lawyers. ( G-1 and G-2). The letter to my good client, Dr. Ormos is self-explanatory. ( H ). I also made one sale in 1975!

Is there a need to suspend<sup>m</sup> from all that ?

Sincerely

*Fred K. Kerpen*  
Fred K. Kerpen



FINANCIAL PLANNING COMM.  
MAILED FOR SERVICE

F. K. KERPEN & COMPANY, INC.

FINANCIAL PLANNING SPECIALISTS

18 EAST 41ST STREET 150 Bway.

NEW YORK, N. Y. 10018

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TELEPHONE  
(212) LEXINGTON 2-9595  
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OTED. NO.

304979

REC'D S.E.C.

JUN 12 1975

June 8, 1975.

Mr. George A. Fitzsimmons  
Secretary, S. E. C.  
Washington, D.C., 20649.

RECEIVED  
OFFICE OF THE SECRETARY  
JUN 12 1975

Re.: Administrative Proceeding File No. 3-4659

Dear Mr. Fitzsimmons:

Thank you for your letter of April 29<sup>th</sup> 1975, setting forth some of the procedures and accepting my brief, dated April 5, 1975, as appeal. On May 29<sup>th</sup> I received notification of the filing of the index by the NASD, together with a copy of it.

So far as I can ascertain the index is complete, containing the transcripts of the hearing, held on April 11, 1974 before the District Business Conduct Committee in complaint # NY-1730 (Doc. # 5) and of the hearing, held on September 5, 1974 before a sub-committee of the Board of Governors (Doc. # 24). Unfortunately, due to disastrous business conditions I was forced to forgo purchase of a copy for my own perusal.

The letter, dated May 12, 1975, to me, signed by Gordon S. Macklin, President of the Association, advising of the effectiveness of the Board's decision, was in error. A telephone call to the Washington office rectified the mistake as to the actual suspension. I can only hope that this was done prior to the transmittal of the suspension date to the membership. My standing in the brokerage community is, and always was, of utmost importance to me. The announcement on page 705 of the current NASD manual (Exh. A-1), even though preceded by a disclaimer, is, in my opinion, prejudicial to my case, giving me free, unfavorable publicity and necessitating a repeat in case the Commission upholds the decision of the Board of Governors or-and I have great faith in the Commission's judgement - more publicity, if the upping of the penalty of censure to one of suspension is reversed. I am aware of my right to continue the fight in case of an adverse decision by the Commission by going to Court, however, having achieved only partial and frugal results in my fight against certain abuses within the industry, in court and administrative procedures, I should think that my case does not warrant further disruption and time-consuming, costly actions. Moreover the disastrous conditions of the business situation would not permit me to employ the necessary legal assistance. Thus the matter rests entirely on the disposition by the Commission.

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F.K.Kerpen & Co., Inc.  
page two  
Letter to Mr. G.A. Fitzsimmons

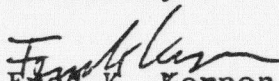
Aware of the procedure for obtaining oral argument before the Commission, I do not feel that I could add substantially by appearing in person, having ~~everything~~ I can ~~thnk~~ off ~~put~~ in writing. Should the Commisision, however, wish to gain a personal impression, I'll be glad to appear in Washington.

In my appeal of the District Committee's decision I have indicated the devastating effect of censure. The Board of Governors has vastly increased the punishment. It was my intent to conclude this short brief with an appeal to the Commission to reverse the decision concerning the suspension and to ~~erase~~ the censure, when, at the beginning of the weekend (which time I use to work on the matter), the 12-page brief, submitted by the NASD, arrived in the mail. Replete with citations, of statutes, releases and case histories, I feel that, although it covers ground gone over repeatedly, I have to respond.

I'll mail this letter together with 7 copies now to be sure to be within the 20-day response period and will follow up with the reponse to the Association's brief next weekend.

I trust that that is in order.

Sincerely

  
Fred K. Kerpen



SECURITIES AND EXCHANGE COMMISSION  
Washington, D. C.

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 12898 / October 15, 1976

Admin. Proc. File No. 3-4659

3-4659-1  
R/A  
SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

OCT 20 1976

In the Matter of the Application of

F. K. KERPEN & CO., INC.  
27 Washington Square North  
New York, New York

and

FRED K. KERPEN

For Review of Disciplinary Action Taken by the  
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - REVIEW OF DISCIPLINARY  
PROCEEDINGS

Violation of Rules of Fair Practice

Failure to Supervise

In proceeding for review of disciplinary action by registered securities association, where registered principal of member of association failed to take timely steps to discover conversion of customers' funds by member's registered representative and prevent such incidents from occurring in the future, association's imposition of sanctions, affirmed.

APPEARANCES:

Fred K. Kerpen, for applicants.

Lloyd J. Derrickson and Andrew McR. Barnes, for the National Association of Securities Dealers, Inc.

Review proceedings with respect to a decision dated March 11, 1975, by the Board of Governors of the National Association of Securities Dealers, Inc. The record was certified to the Commission on October 11, 1975. Oral argument was waived.

F. K. Kerpen & Co., Inc. ("the firm"), a member of the National Association of Securities Dealers, Inc. ("NASD"), and Fred K. Kerpen ("Kerpen"), its registered principal, seek review of disciplinary action taken against them by the NASD. The NASD found that Kerpen

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and the firm failed properly to supervise a registered representative who converted certain customers' funds to his own use, and that such failure resulted in violations of Sections 1 and 27 of Article III of the NASD's Rules of Fair Practice. 1/

The NASD imposed censure upon, and assessed costs against, both Kerpen and the firm, and imposed a ten-day suspension from association with any NASD member upon Kerpen. 2/

The incidents giving rise to the NASD's action against Kerpen and the firm relate to the conduct of Fabian Nebenzahl, formerly a registered representative with the firm. The NASD's findings concerning Nebenzahl's misconduct, which are discussed below, are not disputed by applicants; nor has Nebenzahl sought Commission review of the disciplinary action taken against him by the NASD as a result of such findings. 3/ The applicants do, however, disagree with the NASD's conclusions with regard to what Kerpen should have done to discover Nebenzahl's improper actions and prevent some of them from occurring. Applicants also suggest that, to the extent they might have violated the NASD's Rules of Fair Practice, the sanctions imposed by the NASD are excessive.

The NASD found that, during the period from about August 15, 1968 to April 3, 1970, Nebenzahl, on four separate occasions, caused the liquidation of shares of The Dreyfus Fund, Inc. in the accounts of two of his customers, and converted the funds received from such liquidations to his own use. Furthermore, the NASD found that during this same period Nebenzahl received seven checks from three different customers intended for investment in either The Dreyfus Fund, Inc. or The Dreyfus Leverage Fund, Inc., and that in these instances Nebenzahl also converted the monies to his own use.

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- 1/ Section 1 of Article III requires the observance of high standards of commercial honor and just and equitable principles of trade. Section 27 of Article III requires, inter alia, that each member establish and enforce written procedures which will enable it to supervise properly the activities of registered representatives to assure compliance with applicable laws and NASD rules; and that each member periodically examine customer accounts to detect and prevent irregularities. Section 27 also provides, inter alia, that final responsibility for proper supervision rests with the member.
  - 2/ The ten-day suspension represented an increase of the sanction by the NASD's Board of Governors over that imposed by the District Business Conduct Committee, which had imposed only censure upon Kerpen and the firm and assessed costs. The District Committee also ordered Kerpen and the firm to follow certain procedures concerning supervision and hiring of sales personnel, and the handling of customer complaints. The Board of Governors eliminated the specific imposition of these obligations, stating that such imposition was unnecessary since the obligations were imposed upon Kerpen and the firm by virtue of their registrations with the NASD.
  - 3/ The NASD found that Nebenzahl had violated certain provisions of Article III of its Rules of Fair Practice, and permanently barred him from association with any member of the NASD. The NASD also fined Nebenzahl \$25,000, and assessed costs against him. 0000312



Kerpen terminated Nebenzahl's employment with the firm in September 1971, following the receipt of complaints in July of that year from three of the customers whose funds were converted by Nebenzahl. However, the NASD concluded that Kerpen should have acted sooner. It found that Kerpen had reason to believe, at least as early as February 1970, that Nebenzahl had converted a customer's monies intended for investment. This customer instituted legal action resulting in a judgment against Nebenzahl on October 10, 1970. Kerpen was served with an attachment in connection with that case, although the attachment was released shortly thereafter when the customer apparently agreed to accept Nebenzahl's promise of restitution.

The NASD reasoned that these events, coupled with the fact that Kerpen had earlier received a copy of a complaint from one of Nebenzahl's customers to the Dreyfus Fund concerning unauthorized liquidations of his and his wife's accounts, should have prompted Kerpen to investigate thoroughly Nebenzahl's accounts and activities. The NASD also noted that, even as late as the hearing before the District Business Conduct Committee, Kerpen had not drafted new supervisory procedures which would prohibit representatives from accepting cash from customers for investment. The NASD suggested that, in view of the circumstances, such a failure illustrated an intolerably lax attitude on the part of Kerpen with regard to his supervisory responsibilities.

The applicants argue, in effect, that their failure to take action against Nebenzahl at an earlier date was not unreasonable in view of the circumstances existing at the time. They suggest that the first question to come to Kerpen's attention regarding Nebenzahl's handling of accounts was the aforementioned complaint by a customer to the Dreyfus Fund concerning unauthorized liquidations. It is contended that this complaint, which involved allegations of forgery, seemed incredible when it was made, even though the allegations later proved to be correct. Applicants suggest that Kerpen's failure to take such allegations seriously at the time was reasonable in view of the fact that Nebenzahl previously had enjoyed a good reputation in the broker-dealer community, and in view of the further fact that the Dreyfus Fund failed to communicate with applicants further with respect to this matter after forwarding the complaint.

The NASD concedes the possibility that Kerpen might have been justified initially in overlooking this complaint. It appears to have considered his knowledge of this complaint only in the context of Kerpen's failure to investigate Nebenzahl's activities after it later became clear that another of his customers was experiencing difficulty. The applicants argue, in substance, that by the time of the later complaint, the earlier one had been dismissed from Kerpen's mind and thus is not relevant to the question of what action he should then have taken. The applicants go on to suggest that, with respect to the later complaint, the customer did not pursue the legal action he had instituted; that Nebenzahl attempted to make restitution; and that Kerpen felt at the time that he should attempt to rehabilitate Nebenzahl, rather than deal harshly with him.



We are not persuaded by such reasoning, particularly in view of the clear responsibility for supervision which long has been imposed upon broker-dealers and persons controlling them. 4/ Even assuming, arguendo, that Kerpen was justified in not terminating Nebenzahl's employment with the firm immediately when it became clear that at least one customer's funds had been converted, Kerpen at the very least should have examined thoroughly all of Nebenzahl's accounts, especially the one which had been the subject of the earlier complaint to the Dreyfus Fund. Accordingly, we affirm the NASD's findings of violation.

The only remaining question is whether the sanctions imposed by the NASD are excessive or oppressive. 5/ The applicants argue that they are, at least with respect to the ten-day suspension imposed upon Kerpen. They object to what they suggest is the NASD's reliance upon Kerpen's failure to draft new supervisory procedures which would prohibit registered representatives from accepting cash for investment. They contend, inter alia, that such new procedures were not necessary because the volume of the firm's business had dwindled to virtually nothing by the time the proceeding against applicants was instituted, and that failure to draft such procedures does not reflect a lax attitude on the part of Kerpen. They also suggest that suspension is unnecessary in this case since the firm no longer has any full-time employees, and Kerpen himself devotes only part of his time to it.

The NASD fashioned the sanctions in light of its finding that Kerpen failed to investigate thoroughly Nebenzahl's activities for a considerable period of time after the need for such an investigation should have been clear. Its observation concerning Kerpen's failure to draft new procedures was only incidental to that finding. We recognize that Kerpen's personal honesty has not been called into question in this proceeding. This fact, coupled with Kerpen's acknowledgement that he did not use proper judgment in dealing with Nebenzahl, is sufficient to convince us that applicants are unlikely to repeat these violations.

However, we are mindful that impressing upon applicants the importance of their obligations is only one of the purposes of imposing sanctions. The sanctions in this case are also intended to illustrate to other persons the commendable seriousness with which the NASD regards a failure to supervise properly, a concern fully shared by this Commission. 6/ Under the circumstances, we are unable to conclude that the sanctions

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4/ See, e.g., R. H. Johnson & Co., v. S.E.C., 198 F. 2d 690 (C.A. 2, 1952), cert. denied, 344 U.S. 855 (1952); Kamen & Company, 43 S.E.C. 97 (1966); and L. B. Securities Corporation, 42 S.E.C. 885 (1966).

5/ Section 19(e)(2) of the Securities Exchange Act of 1934. That section also includes within our review function the question of whether a sanction imposes an undue burden on competition. The applicants have made no claim that such a burden is imposed in this case, nor would there appear to be any basis for such a claim.

6/ See Kamen & Company, supra, note 4. Compare Reuben Rose & Co., Inc., 43 S.E.C. 110 (1966).

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imposed on applicants are excessive or oppressive. 7/

An appropriate order will issue.

By the Commission (Chairman HILLS and Commissioners LOOMIS, EVANS and POLLACK).

*George A. Fitzsimmons*  
George A. Fitzsimmons  
Secretary

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- 65 7/ In arriving at our determination with respect to this matter, we see no relevance in applicants' suggestion that only they, and not the investment company the shares of which were improperly redeemed, have been the subject of disciplinary action. Nor could Kerpen's failure properly to supervise be excused by the fact that certain of Nebenzahl's customers might have assured Kerpen that the difficulties were being dealt with adequately. Cf. Hughes v. S.E.C., 174 F. 2d 969 (C.A.D.C., 1949).



UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Rel. No. 12898 / October 15, 1976

Admin. Proc. File No. 3-4659

In the Matter of the Application of

F. K. KERPEN & CO., INC.  
27 Washington Square North  
New York, New York

and

FRED K. KERPEN

For Review of Disciplinary Action Taken by the

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ORDER AFFIRMING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES  
ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the sanctions imposed and the costs assessed by the NASD  
against F. K. Kerpen & Co., Inc. and Fred K. Kerpen, and they here-  
by are, affirmed.

By the Commission.

*George A. Fitzsimmons*  
George A. Fitzsimmons  
Secretary

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